FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN SEMCKEN, Plaintiff - Appellant, v. GENESIS MEDICAL INTERVENTIONAL, INC.; WILLIAM R. DUBRUL; ANDREI MANOLIU, Defendants - Appellees.	No. 04-17202 D.C. No. CV-04-02654-FMS MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Fern M. Smith, District Judge, Presiding

Argued and Submitted May 10, 2005
San Francisco, California

Before: KLEINFELD, HAWKINS, and GRABER, Circuit Judges.

Kevin Semcken sued his former employer, Genesis Medical Interventional, Inc., and individual defendants William Dubrul and Andrei Manoliu, for claims arising out

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

of the termination of his employment. Genesis filed a motion to stay the action pending arbitration or, alternatively, to dismiss, pursuant to an arbitration clause in Semcken's employment contract. The district court granted Genesis's motion, and Semcken appealed.

We find the arbitration clause enforceable and affirm the district court's dismissal. Semcken failed to show the lack of a meaningful opportunity to negotiate the inclusion of the arbitration clause in his employment contract, and therefore cannot demonstrate procedural unconscionability through oppression. *See Abramson v. Juniper Networks, Inc.*, 9 Cal. Rptr. 3d 422, 435-36 (Ct. App. 2004). Because both procedural and substantive unconscionability must be present for a court to invalidate an agreement as unconscionable, *see Armendariz v. Foundation Health Psychcare Servs., Inc.*, 6 P.3d 669, 690 (Cal. 2000), we need not reach the issue of substantive unconscionability, *see Nagrampa v. Mailcoups Inc.*, 401 F.3d 1024, 1030 (9th Cir. 2005).

In addition, the district court did not abuse its discretion in denying Semcken's request for discovery, as the court could reasonably have concluded that Semcken had

already enjoyed a "reasonable opportunity to present evidence" under California Civil Code § 1670.5(b).[1]

AFFIRMED.

[1] There was also no error in not accepting Semcken's argument that Genesis had no right to initiate the arbitration process.